## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

New York City District Council of Carpenters Pension Fund, New York City District Council of Carpenters Welfare Fund, New York City District Council of Carpenters Annuity Fund, and New York City District Council of Carpenters Apprenticeship, Journeyman Retraining, Educational and Industry Fund, by their Trustees, Frank Spencer, Douglas J. McCarron, John Ballantyne, Paul Tyznar, Paul O'Brien, Kevin M. O'Callaghan, Catherine Condon, David Meberg, Bryan Winter, and John DeLollis,	) ) ) ) ) Case No.: 11-CV-5474 (LBS) ) ) ) )
Plaintiffs,	)
-against- Michael Forde, John Greaney, Joseph Olivieri, Brian Hayes, Michael Mitchell, Finbar O'Neill, K.A.F.C.I., Michael Brennan, Turbo Enterprises, Inc., Terence Buckley, Pitcohn Construction Enterprises, Inc., Gerard McEntee, Pyramid Associates Construction Corp., James Duffy, EMB Contracting Corp., Michael Batalias, Elisavet Batalias, Matthew Kelleher, Brian Carson, Joseph Puggeo, John Stamberger, and	
Carson, Joseph Ruocco, John Stamberger, and Michael Vivenzio,	)
Defendants.	)

## DECLARATION OF THOMAS J. CURRAN IN SUPPORT OF DEFENDANTS EMB CONTRACTING CORP., MICHAEL BATALIAS, AND ELISAVET BATALIAS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Thomas J. Curran, declares the following under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows

1. I am a member of Peckar & Abramson, PC, attorneys for EMB Contracting Corp., Michael Batalias, and Elisavet Batalias (collectively "the EMB

Defendants"), defendants in this action. I respectfully submit this declaration in support of the EMB Defendants' Motion to Dismiss the First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil for failure to state a claim upon which relief may be granted.

2. A copy of the First Amended Complaint is attached hereto as Exhibit A.

WHEREFORE, defendants EMB Contracting Corp., Michael Batalias, and Elisavet Batalias respectfully request that this Court grant their Motion to Dismiss the First Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and for such other and further relief as this Court may deem just and proper.

Executed on: February 13, 2012

PECKAR & ABRAMSON, P.C. Attorneys for Defendants EMB Contracting Corp., Michael Batalias and Elisavet Batalias

/s/ Thomas J. Curran

Thomas J. Curran (Bar #TC-2020) 41 Madison Avenue, 20<sup>th</sup> Floor New York, New York 10010 (212) 382-0909